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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/934,349	08/21/2001	Roy McGee	776	7836

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EXAMINER

PELHAM, JOSEPH MOORE

ART UNIT	PAPER NUMBER
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3742

DATE MAILED: 10/30/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/934,349

Applicant(s)

MCGEE ET AL.

Examiner

Joseph M Pelham

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 September 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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1. The examiner acknowledges Applicant's submission of the appeal brief filed 9/16/02. In accord with Office policy, the examiner of record discussed the current rejections in an appeal conference with two other senior examiners. Our conference concluded that prior art should be cited in support of the rejection of the flexible heater recited in claim 5, and that the balance of the rejections are proper and should be maintained.

Prosecution is hereby reopened. Claims 1-6 are pending.

Claim Rejections - 35 USC § 102

2. Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 6075229 to Vanselow.

Referring to Figures 1-4, Vanselow discloses the claimed invention exactly as claimed, including a mug 30, lid 34, base 12, 20, and 12 volt DC adapter plug 47 for use in an automobile.

Claim Rejections - 35 USC § 103

3. Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vanselow in view of U.S. Patent 5023433 to Gordon.

Vanselow discloses a continuously adjustable thermostat, and is silent regarding the details of heater 41. However, the examiner gives official notice that merely "downgrading" the control of Vanselow cannot be regarded to patentably distinguish the claimed invention from the prior art, since it would have been obvious to modify the temperature control of Vanselow to have only two settings to reduce the cost and simplify the device. Gordon discloses a flexible heater "rolled into a hollow cylinder into which a baby bottle may be placed... A plastic housing may be provided" (column 5, lines 41-43), that is, in view of Vanselow, "located on the interior side of the coffee mug holder," as recited. It would therefore have been obvious to adapt the flexible heater of Gordon to the mug warmer of Vanselow, since Gordon discloses beverage warming to be an appropriate application.

Response to Arguments

4. Applicant's arguments filed 9/16/02 have been fully considered but they are not persuasive.

Applicant reiterates 5 limitations which are asserted to be "unanticipated" by Vanselow. The examiner will address these in order:

1. "a lid"

Vanselow discloses a lid 34, as noted in Item 2 above.

2. "A heating elements retained within a base AND powered by 12 volts DC;"

Vanselow discloses a heating element 41 in a base 12 and 12 volt DC power supply capability 47.

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3. "The ability to use the base with a standard drinking mug"

Claim 1 recites only "a cup with handle;" hence the issue of a "standard drinking mug" is not germane.

Claim 2 recites "a generally standard drinking vessel," which does not exclude the mug of Vanselow. Moreover, the pending claims must be "given the broadest reasonable interpretation consistent with the specification." In re Prater, 162 USPQ 541, 550 - 51 (CCPA 1969). The instant specification identifies the invention variously as "an improved coffee mug capable of being electrically heated" and a "generally standard drinking vessel." Vanselow discloses "a new cup warmer holder...for keeping...coffee, hot" and the vessel itself as merely "a cup." Vanselow thus implicates no special structure for the cup to be heated, which hence must be regarded a "generally standard drinking vessel." See also In re Van Geuns (CA FC) 26 USPQ2d 1057

4. "a power plug is capable of connecting directly to a motor vehicle's power system."

The 12 volt DC adapter of Vanselow allows exactly this.


5. "a flexible resistive type heater... on the interior side of the ...holder."

Vanselow discloses a heater on the interior side of the holder but is silent about the type of heater. Newly cited Gordon discloses a flexible resistive type heater to have been conventional in the art at the time of the invention.

Conclusion

5. The *prior art newly cited* on the PTO FORM 892, but not applied, is pertinent to the claimed invention. *Applicant is strongly urged to consider all newly cited prior art when replying to this action.*

Any inquiry concerning communications from the Examiner should be directed to Joseph Pelham at (703) 308-1709; fax: 703-872-9302 (before final), 703-872-9303 (after final), 703-872-9301 (customer service).


Joseph Pelham
Primary Patent Examiner
Art Unit 3742

JMP
October 25, 2002